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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,829	03/10/2004	Donald Ullman	03152/0200953-US0	5044
7278	7590	11/01/2006	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER

1761

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/798,829

Applicant(s)

ULLMAN ET AL.

Examiner

Steven L. Weinstein

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/5/06</u> . | 6) <input type="checkbox"/> Other: ____. |

Art Unit: 1761

In regard to claims 1-20, it is first noted that the claims do not positively recite either the chewing gum or the candy. The apparatus is "for" enhancing a chewing gum and "for" storing candy and a gum holding ring "for" receiving and holding a piece of chewed gum. Therefore, the apparatus is recited as capable of performing the recited functions, but is readable on the structure without gum or candy. Therefore, the rejections are based on an apparatus devoid of contents.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5,7-12,17,18,20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Renna (WO 00/76327).

In regard to claim 1, Renna discloses various holding rings (e.g. A which includes T), that would be capable of holding gum, wherein the ring has an upstanding member (e.g., #2 or #34) and the apparatus further comprises a first container body (e.g. D releasably coupled to a first section of the ring which is capable of defining a first compartment and a second container body (shown e.g. in fig. 19) which is releasably coupled to a second section of the ring which would define a second compartment capable of storing candy, and wherein the ring has openings formed therethrough capable of permitting communication between the first and second compartments, with the member extending into the first compartment such that a piece of gum that would be

Art Unit: 1761

disposed in the first compartment upon manipulation of the apparatus, would be coated by candy that would travel through the openings and into contact with the gum. This is all that claim 1 is seen to positively recite. In regard to claims 2 and 3, Renna discloses the recitations regarding the first and second container body. In regard to claim 4, Renna discloses the ring having a section with a plurality of connecting members and openings between connecting members (e.g. fig.2). In regard to claims 5 and 7, Renna discloses that the post can have surface altering features, which can be latitudinal ridges (e.g. fig. 34,#34a). In regard to claim 8, Renna discloses that the connecting members are spokes. In regard to claims 9 and 10, Renna discloses the ring comprising both flange and shoulder for allowing seating of the first container body (e.g. fig. 4), which frictionally connect to each other. In regard to claim 11, Renna discloses that the apparatus can have three spokes defining three openings (e.g. fig.33). In regard to claim 12, which recites that both container bodies frictionally fit to the holding ring, Renna discloses that the ring also fits to the second container body as well e.g., by threads, which would provide a friction fit. In regard to claims 17 and 18, as noted above, claim 1 does not positively recite the contents and Renna is seen to be capable of holding the recited candy and the recited gum. In regard to claim 20, Renna discloses that the closed end of the first container body is rounded and the closed end of the second container body is planar to permit the apparatus to stand upright. Claim 21, which recites all limitations addressed above, is rejected for the reasons given above.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1761

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Renna in view of Cecere (6,565,899), Coleman et al (2003/0152672), Chan (6,730,339), Coleman et al (2003/0206999), and Hart et al (2003/0118700).

Claim 6 further recites that the post has a conically shaped section between the surface altering features and the proximal end; i.e., toward the base of the post. The specification appears to be silent as to what function is derived through this shape. Since Renna already discloses the upper surface altering feature, whether the post also has a lower conically shaped section is seen to have been an obvious matter of design. In any case, as evidenced by Cecere (e.g. fig.11), Coleman et al ('672) (e.g. fig. 6), and Chan (e.g. fig. 22), the art is replete with food supporting structures wherein the lower part of the food supporting structure tapers outwardly and downwardly in a conical manner and to modify Renna and provide the lower part of the food supporting structure with the conventional geometry, presumably for greater strength and stability, would therefore have been obvious.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Renna in view of Jolly (2,980,039).

Claim 13 recites that the second section of the base of the ring includes an inner and outer flange member with an annular space therebetween, with the open first end of the second container body being disposed between the flange members. Renna discloses a different conventional structure to mechanically connect two elements. As

Art Unit: 1761

evidenced by Jolly, it was notoriously conventional in the art to secure one element to another by providing one element with inner and outer flanges and an annular space therebetween, and wherein the second element is a container which includes an open end, which open end is frictionally disposed between the flange members. See, for example, in this regard, col.2,para.1 and fig.3 of Jolly, wherein the open ended container is #12 and the element to be secured to the container, and which has the pair of flange members, is the closure element #30. To modify Renna and substitute one conventional mechanical connecting expedient for another conventional mechanical connecting expedient for its art recognized and applicants intended function would therefore have been obvious. In regard to claims 14 and 15, as noted above Renna discloses the spoke structure.

Claims 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Renna in view of Boettger (2,835,246), Owen (2,389,385), Swain (3,139,976), and Towns (3,164,279).

Claims 16 and 19 recite a plurality of ribs formed around the apparatus and spaced from each other. As disclosed, and actually claimed in claim 19, the ribs act as an anti-roll feature. As evidenced by Boettger, Owen, Swain, and Towns, the art is replete with examples evidencing that it was notoriously conventional to provide cylindrical containers with spaced longitudinally extending ribs (or one circumferentially extending ribs – Towns), for the specific purpose of preventing the cylindrical containers from rolling. To modify Renna and provide ribs anywhere along the container surface for its art recognized and applicants intended function would therefore have been obvious.

Art Unit: 1761

Claims 1-5,7-12,17,18,20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoeting et al (5,993,870) in view of Renna, Paulin (5,085,330), Killips (2004/02533351), Hamlin(5,312,014), and Bacanskas (2003/0012854).

In regard to claim 1, Hoeting et al discloses an apparatus that would be capable of enhancing chewing gum comprising first and second container bodies wherein the first container body would be capable of receiving the gum and the second, lower body receives candy, and where there is communication between the container bodies so that the candy in the second, lower container can coat the product in the first, upper container body. Claim 1 differs from Hoeting et al in the means to hold the gum. In Hoeting et al, the gum holding element originates in the lower container body, whereas the claim recites an article holding ring with openings therein. As noted above, Renna who is also directed to separately storing two edibles in a container, and discloses a container which provides an article holding ring, and, at the appropriate time, manipulating the container to allow the edibles to contact each other, also discloses that a food holding ring with passages therethrough was conventional. To modify Hoeting et al and substitute one conventional support system for another conventional support system, for its art recognized and applicants intended function would therefore have been obvious. Paulin, Killips, Hamlin, and Bacanskas are relied on as further evidence of the conventionality of providing two foods in two separate compartments with passageways to allow one food to contact the other food. In regard to the remainder of the claims, Renna can be relied on as above to teach it would have been obvious to modify Hoeting with the various elements recited in the dependent claims.

Art Unit: 1761

Claim 6 is rejected under 35USC103(a) as being unpatentable over Hoeting et al (5,993,870) in view of Renna, Paulin (5,085,330), Killips (2004/02533351), Hamlin(5,312,014), and Bacanskas (2003/0012854), further in view of view of Cecere (6,565,899), Coleman et al (2003/0152672), Chan (6,730,339), Coleman et al (2003/0206999), and Hart et al (2003/0118700), who are applied for the reasons given above in regard to claim 6.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoeting et al (5,993,870) in view of Renna, Paulin (5,085,330), Killips (2004/02533351), Hamlin(5,312,014), and Bacanskas (2003/0012854), further in view of Jolly (2,980,039), who is applied for the reasons given above in regard to claim 6.

Claims 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoeting et al (5,993,870) in view of Renna, Paulin (5,085,330), Killips (2004/02533351), Hamlin(5,312,014), and Bacanskas (2003/0012854), further in view of Boettger (2,835,246), Owen (2,389,385), Swain (3,139,976), and Towns (3,164,279), who are applied for the reasons given above in regard to claims 16 and 19.

The remainder of the references cited on the PTO892 form are cited as art of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

Art Unit: 1761

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steve Weinstein
STEVE WEINSTEIN 1761
PRIMARY EXAMINER
10/29/06